

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (“Agreement”) is entered into this ____ day of _____, 200____, by _____, a _____ corporation (“Grantee”), and **THE CITY OF FAIRFAX, VIRGINIA**, a Virginia municipal corporation (the “City”).

RECITALS

WHEREAS, Grantee is a certificated provider of telecommunications service in the Commonwealth of Virginia; and

WHEREAS, Grantee desires to use the City’s Public Ways to construct, operate, maintain, repair, and upgrade its Telecommunications Facilities; and

WHEREAS, Grantee, in addition to the consideration hereinafter provided, agrees to give certain assurances and guarantees to the City in exchange for receiving permission from the City to construct and install its telecommunications facilities within the City’s Public Ways; and

WHEREAS, the City agrees to permit Grantee to use the City’s Public Ways pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the covenants, assurances, indemnities and guarantees of Grantee and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Recitals.** The recitals hereto are incorporated herein by this reference.

2. **Definitions.** The following terms are defined:

(a) “Access Lines” shall have the meaning as defined in Section. 56-468.1 of the Code of Virginia (1950), as amended.

(b) “Certificated provider of telecommunications service” shall the meaning as defined in Section 56-468.1 of the Code of Virginia (1950), as amended.

(c) “Existing Facilities” shall mean existing water, gas and sewer pipes and all other utilities and conduits in the City’s Public Ways including, but not limited to, electric lines and traffic signal cables, as well as any pavements, curbing and landscaping owned by the City and any other franchisees or users of the City’s Public Ways.

(d) “Public Rights-of-Way Use Fee” shall mean a fee charged and billed monthly to the ultimate end user of each access line of a certificated provider of local exchange telephone

service, the rate of which fee shall be established annually by the Virginia Department of Transportation in the manner specified in Section 56-468.1 of the Code of Virginia (1950), as amended.

(e) “Public Ways” shall mean the surface, the air space above the surface, and the area below the surface of any public street, road, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, easement, other public right-of-way, or other public property in the City.

(f) “Telecommunications Facilities” shall mean any and all telecommunications cables, lines, conduits, access manholes, pedestals, boxes, and other similar equipment and devices owned or used by Grantee.

(g) “Term” shall mean the period commencing on the date of execution of this Agreement and ending on the fifth (5th) anniversary thereof, unless terminated at an earlier date in accordance with the terms and conditions of Section 13 of this Agreement.

3. Grant.

Subject to the terms and conditions of this Agreement, the City hereby grants to Grantee, its agents and contractors, nonexclusive permission to construct and install telecommunications facilities over and/or under Public Ways during the Term in accordance with plans pre-approved by the City and in a form acceptable to the City, and to operate, maintain, repair, reconstruct, replace, relocate and remove the same in accordance with this Agreement. Grantee agrees to consult with the City, prior to the submission of the first set of any plans for work to be conducted under this Agreement, and obtain the City’s approval for plan format and site plans prior to the commencement of any work. Grantee may effect construction of the facilities on the Public Ways only after approval has been given by the City, which approval shall not be unreasonably withheld. The City shall notify Grantee in writing of its approval, or disapproval, of the proposed construction within a reasonable time after delivery by Grantee to the City of plans and specifications in a form pre-approved by the City. Further, Grantee may perform maintenance on the facilities from time to time without prior approval by the City. However, in the event such maintenance will disturb or block vehicular or pedestrian traffic in the Public Ways, Grantee agrees to obtain any and all permits and required permissions from the City prior to commencing with such maintenance, unless the requirement for maintenance is due to an emergency situation threatening the health, safety and welfare of the residents of the City. A potential business loss shall not be considered an emergency situation under this Agreement.

4. Agreement to Protect Existing Facilities.

Grantee for itself, its employees, officers, agents and contractors, agrees to take all prudent action to protect all Existing Facilities located within the City’s Public Ways from any damage or injury caused by any work performed by or on behalf of Grantee regarding the construction, installation, operation, inspection, maintenance, repair, reconstruction, replacement, relocation, or removal of its Telecommunications Facilities or the failure, deterioration or collapse of such

Telecommunications Facilities. Grantee shall immediately notify the City Manager and the appropriate public safety agency (e.g. fire department) of any damage or injury to any Existing Facility caused by work authorized pursuant to this Agreement, and, without in any way limiting the obligations of Grantee under this Agreement, shall pay to the City upon demand all costs incurred by the City for the repair of such damage or injury including, but not limited to, all costs incurred by the City in purchasing water from alternative sources in the event of any interruption in water service. Grantee shall provide for a local, Virginia-licensed contractor to be on-call to respond within 30 minutes to any incident where City water or sanitary sewer lines or services are damaged or injured. Such contractor shall be a reputable water and sanitary sewer contractor and shall be mutually agreed to by Grantee and the City prior to the commencement of any construction. Grantee shall provide test pits at all utility crossings and keep such test pits open until that section of the boring operation is complete. The minimum separation of City water and sanitary sewer facilities and Grantee's equipment shall be one (1) foot vertical and five (5) feet horizontal. Further, no new utility poles shall be added within City rights of way, and existing conduit shall be used wherever available. No attachments shall be made to existing utility poles without the permission of the owner of said pole. All cable location identifying markers are to be ground mounted.

All disturbed areas are to be cleaned, stabilized, covered and seeded, as necessary, at the end of each work day, and no construction equipment or any other vehicles owned by Grantee or its employees or contractors, shall be parked on city rights of way after working hours. Written permission shall be obtained for parking or any other encroachment on private property and a copy of such written permission shall be promptly provided to the City.

Grantee agrees that if it finds any naturally occurring asbestos while conducting work under this Agreement, it shall immediately inform the City and the Fairfax County Air Pollution and Control Division.

Grantee agrees to continuously provide the City with an accurate and complete list of emergency telephone numbers of representatives of Grantee and any contractors, subcontractors, consultants, employees, or others responsible for the installation, operation and maintenance of the Telecommunications Equipment. Such list shall provide for 24 hours a day, 7 days a week contact, and Grantee shall immediately notify the City of any changes to the list.

5. Indemnification.

Grantee hereby agrees to indemnify and hold harmless the City, its elected officials, officers, employees and agents from all demands, claims, actions, judgments, damages, losses, liabilities, costs and expenses (including attorneys' fees and costs) arising out of the acts or omissions of Grantee, its employees, contractors or agents in connection with the construction, installation, operation, inspection, maintenance, repair, reconstruction, replacement, relocation, or removal of its Telecommunications Facilities or the failure, deterioration or collapse of such Telecommunications Facilities, or the damage to or encroachment upon private property by Grantee, its employees, contractors or agents. If the City suffers any damage, loss or liability, or if any legal proceedings are instituted (whether frivolous or otherwise) against the City, its elected officials, officers, employees

and/or agents with respect to such work performed by or on behalf of Grantee, the City shall promptly give written notice thereof to Grantee which shall, at its own expense, pay for or defend (with counsel reasonably acceptable to the City) all such actions and pay for all damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees and costs) in defense of such legal proceedings. Grantee shall pay all judgments, costs, expenses and reasonable attorneys' fees incurred by the City and the parties herein indemnified from such legal proceedings.

6. Insurance.

Grantee shall at all times during the Term of this Agreement maintain a commercial general liability insurance policy, to include bodily injury, personal injury, and property damage coverage, written on an occurrence basis with a company licensed to transact business in Virginia and reasonably acceptable to the City, in an amount of not less than Two Million Dollars (\$2,000,000) to cover construction, installation, operation, inspection, maintenance, repair, reconstruction, replacement or removal of its Telecommunications Facilities and any damage or loss suffered or incurred by the City, its elected officials, officers, agents and employees resulting from such work. Grantee shall require, at all times, that all contractors performing work under this Agreement maintain general liability, auto liability, excess liability, workers compensation and employer's liability insurance coverage, in the following amounts: general liability insurance coverage, in the amount of Two Million Dollars (\$2,000,000) per occurrence; auto liability coverage in the amount of Two Million Dollars (\$2,000,000); workers compensation and employer's liability insurance coverage in the statutorily required amounts; and excess liability insurance coverage in the amount of Two Million Dollars (\$2,000,000), with the City, its elected officials, officers, employees, agents, representatives and volunteers named as additional insureds on such policies. Grantee shall deliver to the City, for review and approval by the City before any work is commenced under this Agreement, certificates of insurance, of a form acceptable to the City, demonstrating that the insurance coverage required by this section is in full force and effect. Such certificate, among other things, shall indicate that the insurance company shall give thirty (30) days prior written notice of expiration, cancellation, non-renewal or material change in coverage to the City.

This obligation shall not relieve Grantee from its independent obligation to give any notices to the City required by this Agreement, including the obligation to keep itself and the City informed of all expirations, renewals, cancellations and changes in insurance coverage for insurance required under this section, including insurance required of its employees, agents and contractors. Grantee agrees, for itself, its employees, agents and contractors, to keep all such insurance coverage in full force and effect during the period when installation, maintenance, relocation or removal work is performed under this Agreement. Thirty (30) days prior to the expiration, cancellation or renewal of any such insurance policy, Grantee shall provide the City with written evidence, in a form acceptable to the City, that the required insurance coverage is bound, will be continuing throughout the course of any work under this Agreement, and that any insurance premiums have been paid. If the City is required to pay any claim made under the applicable insurance policies, Grantee agrees to pay all such claims, including all deductibles, and any fees associated with the claim, including reasonable attorneys' fees.

7. Bond.

Grantee, prior to execution of this Agreement by the City, shall submit to the City and maintain in effect a bond in the principal amount of Twenty-Five Thousand Dollars (\$25,000) (“Bond”) to ensure faithful compliance with the conditions of this Agreement. Such bond shall be in a form acceptable to the City, meeting the requirements of Chapter 2, Article VI, Division 2, Sections 2-296 through 2-301 of the Code of the City of Fairfax, Virginia, and shall remain in effect throughout the term of this Agreement. The purpose of the Bond is to provide payment to the City for any and all expenditures incurred by the City under this Agreement, including but not limited to costs of repairs to any water line or any other Existing Facilities and attorneys’ fees and costs, reasonably necessary to enforce the terms of this Agreement. The Bond shall in no way limit the liability or obligations of Grantee or its insurers under this Agreement. If the funds represented by the Bond become exhausted, Grantee shall immediately provide the City with a new Bond in the amount of Twenty-Five Thousand Dollars (\$25,000).

8. Release of the Bond.

Upon completion of the construction and installation of each of its Telecommunications Facilities and notice thereof to the City from Grantee, representatives of the City will inspect the work to ensure satisfactory completion to City requirements. At the conclusion of the term of this Agreement, after all of the Telecommunications Facilities are removed or abandoned in place as directed by the City’s representative and in accordance with City specifications and any damage to the Public Ways is repaired in accordance with Section 13, the City will promptly issue a notice of completion and will release the Bond, without interest, to Grantee within thirty (30) days after three (3) months from the date of the City’s notice of completion.

9. Scheduled Maintenance or Removal.

Prior to the commencement of any scheduled maintenance or removal of its Telecommunications Facilities that requires entry onto the City’s Public Ways, Grantee shall submit a proposed maintenance or removal plan and schedule to the City for approval, such approval not to be unreasonably withheld or delayed.

10. Notice to City Prior to Entering City’s Public Ways

Grantee shall provide notice to the City at least forty-eight (48) hours prior to entering the City’s Public Ways to maintain its Telecommunications Facilities, except in the event of an emergency where Grantee cannot provide the required advance notification, in which event Grantee shall notify the City as soon as is practicable.

11. Relocation

The City may request relocation of any of the Telecommunications Facilities by delivering written notice thereof to Grantee, which notice shall delineate with specificity the alternative Public

Ways to which Grantee may relocate such Facilities. Grantee shall thereafter relocate such Telecommunications Facilities to such alternative Public Ways as soon as practicable, but shall not be required to do so sooner than one-hundred and twenty (120) days after delivery of such notice, Grantee shall have the option to do sooner, in its discretion. Reimbursement for relocation costs shall be in accordance with Section 56-468.2 of the Code of Virginia (1950), as amended.

12. Termination.

This Agreement may be terminated:

(a) by Grantee, at its election and without cause, by delivering written notice thereof to the City at least (60) days prior to the effective date of such termination; or

(b) by either Grantee or the City if, after written notice by one party to the other of the occurrence or existence of a default by the other party under this Agreement, such defaulting party fails to cure, or commence good faith efforts to cure, such default within thirty (30) days after delivery of such notice.

Notwithstanding any provisions in this Agreement to the contrary, the terms and conditions of this Agreement pertaining to indemnification shall survive termination.

13. End of Term.

As soon as practicable after the end of the Term, Grantee shall, at Grantee's cost and expense, remove from the Public Ways all of its Telecommunications Facilities. Grantee shall repair any damage to the Public Ways caused by the removal of such Telecommunications Facilities. The terms and conditions of this Agreement concerning the removal of Telecommunications Facilities shall be applicable to any removal of Telecommunications Facilities under this Agreement.

14. Compensation.

In consideration for execution and performance of this Agreement by the City, Grantee agrees to pay the City a Public Rights-of-Way Use Fee in the amount set by the Virginia Department of Transportation annually pursuant to Section 56-468.1 of the Code of Virginia (1950), as amended.

In no event will the Public Rights-of-Way Use Fee be less than as provided by Section 56-468.1(C) of the Code of Virginia (1950), as amended. Grantee agrees to pay the Public Rights-of-Way Use Fee, as modified from time to time by the Virginia Department of Transportation. Grantee further acknowledges and agrees to pay all applicable zoning, subdivision, site plan, permitting, and like fees of general application in addition to payment of the Public Rights-of-Way Use Fee. Finally, Grantee agrees to comply with all other requirements imposed by the Virginia Department of Transportation and the City in connection with the administration of the Public Rights-of-Way Use Fee, including all applicable reporting requirements and any and all requirements for permits.

15. Non-Discrimination.

City represents to Grantee that the fees and charges payable by Grantee are applied on a nondiscriminatory basis to all telecommunications service providers using the Public Ways.

16. Assignment.

Grantee may not assign or otherwise transfer this Agreement or the license granted herein without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed; provided, however, that Grantee shall not be required to obtain the consent of the City to any assignment or transfer of this Agreement or the license herein granted to any Affiliate of Grantee, any purchaser of all or substantially all of the assets of Grantee, or any company or entity with which or into which Grantee may merge or consolidate.

17. Governing Law.

This Agreement shall be subject to, and construed in accordance with the laws of the Commonwealth of Virginia and the ordinances, policies and regulations of the City.

18. Binding Effect.

The terms and provisions of this Agreement shall inure to and be binding upon the assigns and successors in interest of Grantee and the City.

19. Severability.

The sections, paragraphs, sentences, clauses and phrases contained in this Agreement are severable, and if any phrase, clause, sentence, paragraph or section of this Agreement shall be declared unconstitutional or otherwise invalid by a valid judgment or decree of a court of competent jurisdiction, such constitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Agreement. In the event there is any conflict between the terms or definitions contained in this Agreement and Section 56-468.1, of the Code of Virginia (1950), as amended, the provisions in Section 56-468.1 of the Code of Virginia (1950), as amended, shall control.

20. Entire Agreement.

This Agreement, including all Exhibits, if any, constitutes the entire agreement between Grantee and the City with respect to the subject matter hereof and supersedes any prior discussions, agreements, or understandings, whether verbal or written. No amendment or modification of this Agreement shall be valid unless made in writing and signed by Grantee and the City or unless provided for herein.

21. Notices.

Unless otherwise designated in writing, all notices required or permitted hereunder to be sent to the City shall be given in writing to the City Manager, Fairfax City Hall, 10455 Armstrong Street, Fairfax, Virginia 22030. Unless otherwise designated in writing, all notices required or permitted hereunder to be sent to Grantee shall be given in writing to:

With A Copy To:

All notices shall be deemed served if hand-delivered or sent by United States registered or certified mail, return receipt requested, or by a nationally recognized overnight delivery service with signed evidence of receipt. Notices shall be effective upon receipt.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by its proper

officers this ____ day of _____, 200__.

WITNESS/ATTEST:

a _____ **Corporation**

By:_____

Name:_____

Title:_____

ATTEST:

**CITY OF FAIRFAX, VIRGINIA,
a Virginia municipal corporation**

City Clerk

By:_____

Name: Robert Sisson

Title: City Manager

Approved as to form:

City Attorney

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____,
200__, by _____, as _____, on behalf of
_____.

Notary Public

My Commission Expires: _____

COMMONWEALTH OF VIRGINIA

CITY OF FAIRFAX

The foregoing instrument was acknowledged before me this ____ day of _____,
200__, by Robert Sisson as City Manager on behalf of the City of Fairfax, Virginia.

Notary Public

My Commission Expires: _____